A.F.R.

6.3.06

(22)

HIGH COURT OF CHHAGGISGAR AT BILASPUR

Cr.Appeal No. 799/2005

Prakash Singh

Vs.

State of Chhattisgarh

Post for Judgment : 06.03.2006

Sd-/
Dilip Raosaheb Deshmukh
Judge

(123)

A.F.R.
6.3.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.799/2005

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Prakash Singh

Versus

State of Chhattisgarh

Shri Ashok Kumar Shukla, Counsel for the appellant.

Shri U. K. S. Chandel, P. L. for the State.

JUDGMENT

(Delivered on 06th day of March 2006)

This appeal is directed against the judgment dated 24.9.2005 delivered by Shri Kanak Prasad Kurre, Special Judge, N.D.P.S. Act, Ambikapur in Special Crime Case No.5/2003 whereby the appellant was convicted under section 21 (b) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'the Act') for having been found in possession of *Heroin* weighing 16 grams 740 milligrams on 21.3.2003 and sentenced to undergo rigorous imprisonment for 5 years and a fine of Rs.1,000/-, in default of the same, to undergo additional simple imprisonment for three months.

2. Brief facts are that upon receiving secret information that some person was proceeding towards Namnakala for selling brown sugar (*Heroin*), Assistant Sub-Inspector S.C.Shukla P.W.1 of the District Crime Squad, Ambikapur apprehended the appellant at Namnakala and after giving him notice under Section 50 of the Act, searched the appellant. In the right pocket of the full pant of the appellant brown coloured substance like brown sugar in three white

small polythene bags and one white paper packet was found. The contents of the three polythene bags and the white paper packet were seized vide Ex.P.6, and thereafter, the contents of each packet were mixed to make a homogenous content. The substance was weighed by Kishorilal Saraf P.W.9 who found vide weighment *Panchnama* Ex.P.10 that the total weight of the substance seized from the appellant was 16 grams 740 milligrams. The articles were sealed and were handed over to Head Constable Ramdas P.W.3 for safe custody in *Malkhana* on 21.3.2003 and acknowledgment Ex.P.18 was obtained. On 23.3.2003 vide memo of the Superintendent of Police, Surguja Ex.P.20, all the four packets along with specimen impression of the seal were sent for chemical analysis. Forensic Science Laboratory, Raipur vide report Ex.P.22 dated 4.4.2003 opined that all the four packets contained diacital morphine (heroin).

3. After completion of investigation, the appellant was prosecuted and charged under Section 22 of the Act. The appellant abjured the guilt. The prosecution examined as many as 9 witnesses. No evidence in defence was led by the appellant. Relying upon the evidence led by the prosecution, the learned trial Judge convicted the appellant under Section 21(b) of the Act and sentenced him as aforesaid in para 1.

4. Shri Ashok Kumar Shukla, learned counsel for the appellant has assailed the conviction of the appellant on the ground that the evidence led by the prosecution does not establish the guilt of the appellant under Section 21 (b) of the Act. He argued that independent witnesses Rajendra Prasad P.W.7 and Jhunku Prasad P.W.8 did not support the prosecution story. Constable Lavkush P.W.6 who had accompanied A.S.I. Shri S.C.Shukla at the spot did not state that the articles seized had been sealed. Seizure memo Ex.P.6 which was effected at 1830 hours bore the specimen impression of the seal.

Thereafter, *Samaras Panchnama* Ex.P.7 was written on 1835 hours meaning thereby that the seal must have been broken without which the contents of the packets could not have been mixed. The weighment *Panchnama* Ex.P.10 did not make any mention about the plastic bags or paper packet in which the brown sugar like substance was alleged to have been seized. It was pointed out that witness Kishorilal Saraf P.W.9 had initially stated that the Inspector had brought only one packet to his shop for weighment and later improved upon his statement and stated that three packets were weighed by him. He did not depose as to what was the weight of contents of each packet. It therefore became extremely doubtful as to whether four unsealed packets had been taken to Kishorilal Saraf P.W.9 for weighment after they were sealed because Kishorilal Saraf P.W.9 did not state that any of the packets were sealed. There was totally non-compliance of Section 55 of the Act since there was no evidence to show that the S.H.O. of P.S. Ambikapur had affixed his seal on the four sealed packets entrusted by A.S.I. S.C.Shukla P.W.1 to Head Constable Rajendra Prasad P.W.7 for safe custody. There was also no evidence to show that Shri S.C.Shukla, A.S.I. had prepared a specimen impression of seal which was sent along with the sealed packets to Forensic Science Laboratory. Constable Dakeshwar P.W.4 who took the sealed packets to the F.S.L. also did not state that those packets had contained the seal of the S.H.O. On these grounds, learned counsel for the appellant contended that the prosecution had failed to establish the guilt of the appellant under Section 21(b) of the Act. On the other hand, Shri U.K.S.Chandel, learned Panel Lawyer for the State argued in support of the impugned judgment.

4. Having heard the rival contentions, I have gone through the record. A.S.I. S.C.Shukla, P.W.1 deposed that after giving notice

under Section 50 of the Act to the appellant, he had searched the appellant and found three small white polythene bags and one white paper packet in the right pocket of the full pant containing brown coloured powder like substance which appeared like brown sugar. Thereafter, he had prepared the seizure memo Ex.P.6 and had affixed the specimen impression of the seal thereon meaning thereby that after effecting the seizure of the three small polythene bags and one paper packet, they were sealed by A.S.I. S.C.Shukla. A.S.I. S. C. Shukla has further stated that he had prepared *Samaras Panchnama* vide Ex.P.7 at 1835 hours. However, in this *Panchnama,* it has not been stated that the seal on the three small polythene bags and one white paper packet were broken and thereafter a homogenous admixture of the contents of the four packets was prepared. Unless the seals, if any, on the four packets were broken it would be impossible to prepare a homogenous admixture of the contents of each packet. It also does not state that the packets were sealed thereafter. This by itself creates a serious doubt whether A.S.I. Shukla had sealed the four packets after preparing seizure memo Ex.P.6.

5. Kishorilal Saraf P.W.9 who had weighed the contents of the packets also did not state that he had weighed the contents of all four packets. In para 3, he stated that the Sub-Inspector had brought only one packet to his shop for weighment. In para 4, he stated that he had weighed three packets. He did not depose the weight of each packet. He also did not depose that each packet was sealed after weighment. It is beyond comprehension that if *Samaras Panchnama* was prepared after effecting the seizure and sealing the packets, then how the contents were again separated in four different packets. The testimony of Kishorilal Saraf P.W.9 also

creates doubt that the seized packets were sealed by A.S.I. S. C. Shukla.

6. Constable Lavkush P.W.6 who was present throughout the proceedings by A.S.I. S.C.Shukla also did not state that four packets had been seized from the full pant pocket of the appellant. According to him, upon being searched only one polythene packet containing brown sugar like substance had been seized. He did not state that A.S.I. S.C.Shukla had sealed the seized packets. This further creates a serious dent in the testimony of A.S.I. S. C. Shukla.

7. Independent witnesses Rajendra Prasad P.W.7 and Jhunku Prasad P.W.8 also did not support the prosecution story. According to Rajendra Prasad P.W.7, A.S.I. S.C.Shukla came to him and asked to sign some documents whereupon he had signed the various documents alleged to have been executed by S.C.Shukla, A.S.I. on the spot. He has specifically denied that the police had seized brown sugar like substance from the full pant pocket of the appellant. Jhunku Prasad P.W.8 had also deposed that the Inspector had stopped him while he was returning from Namnakala to his house and asked him to sign some documents and upon his refusal, Inspector had assured him that he should sign the documents as nothing would happen. He has denied that he went with the police and that any seizure of brown sugar was effected in his presence by S.C.Shukla. This further weakens the prosecution ~~story~~ case.

8. A.S.I. S.C.Shukla P.W.1 has in para 21 stated that he had handed over the four sealed packets to Head Constable Ramdas P.W.3 and obtained acknowledgment Ex.P.18. Head Constable Ramdas P.W.3 has also corroborated the above statement. However, both these witnesses have not stated that the Station House Officer of Police Station Ambikapur had affixed his seal on the sample packets which

were entrusted for safe custody in the *Malkhana* of Police Station Ambikapur.

9. Section 55 of the Act reads as under:

> **55. Police to take charge of articles seized and delivered.**—*An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police Station.*

A plain reading of Section 55 shows that before keeping articles seized in the *Malkhana*, the officer-in-charge of the police station is required not only to ensure that the officer accompanying such articles has affixed his seal on such articles but also required to put his seal on such packets. This provision acts as a safeguard against tampering with the articles seized. It is the duty of the prosecution to lead evidence to establish that right from the time when the articles were seized, upto the time when the articles were received for chemical analysis in the F.S.L. they were properly sealed as required by the Act. However, in this case, there is total non-compliance of Section 55 of the Act. In view of the aforesaid discussion, a serious doubt is created whether the contents of the four packets alleged to have been seized from the appellant had been sealed by A.S.I. S.C.Shukla. The total non-compliance of Section 55 also does not rule out the possibility that the substance sent for chemical analysis to the F.S.L. could have been tampered.

10. Having thus considered the evidence led by the prosecution in its entirety, the following points emerge:

a) Independent witnesses Rajendra Prasad P.W.7 and Jhunku Prasad P.W.8 did not support the prosecution story.

b) Constable Lavkush did not depose that the substance alleged to have been seized from the appellant was sealed. He seriously contradicted the testimony of A.S.I. S.C.Shukla P.W.1 by stating that only one packet containing brown sugar like substance had been seized from the full pant of the appellant.

c) Kishorilal Saraf P.W.9 also did not depose that the contents of the packet weighed by him were sealed. He also contradicted A.S.I. S.C.Shukla by stating at one place that only one packet had been brought to his shop for weighment and at another place by stating that he had weighed three packets. He did not depose the weight of each packet.

d) There is total non-compliance of the provision of Section 55 of the Act.

e) The time of execution of *Samaras Panchnama* Ex.P.7 clearly indicated that the seal of the four packets must have been broken open for making a homogenous admixture of the contents of all the four packets. A.S.I. Shukla did not depose so. There is no evidence that the articles were sealed again after preparing the *Samaras Panchnama.*

In view of the above facts, conviction of the appellant under Section 21(b) of the Act and the sentence imposed thereunder deserves to be set aside.

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11. In the result, the appeal is allowed. Conviction of the appellant under Section 21(b) of the Act and the sentence imposed thereunder are set aside. The appellant is acquitted and shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded to the appellant.

Sd-/
Dilip Raosaheb Deshmukh
Judge